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[APPENDIX 1]

2.1 *KEEPING GOOD COMPANY*

A Study of Corporate Governance in Five Countries- by Jonathan Charkham

The two basic principles which underlie corporate governance common to all countries; *they [i.e. the managers] must be free to drive their companies forward but exercise that freedom within a framework of effective accountability.'*

[Committee on the Financial Aspects of Corporate Governance 1992][ref. No: 1]

However, the way the above is interpreted and applied in different countries and different organisation differs .

Jonathan Charkham (Ref. 1) defines corporate governance as the system by which companies are directed and controlled. A system of corporate governance is concerned with checks and balances on the exercise of power and with its peaceful transfer. A good system gives power to those best able to use it, and to remove it if they use it poorly or evil. The better system gives better chance for all employees of the corporation to be able and inspired to give of their best, which is what they, their firm, and their country want and need.

This can be restated as:-

- 1) That management must be able to drive the enterprise forward free from overdue constraint covered by government interference, fear of litigation, or fear of displacement.
- 2) That this freedom -to use managerial power and patronage - must be exercised within a framework of effective accountability. Nominal accountability is not enough.

To evaluate any system of corporate governance requires careful consideration whether or to what extent these two principles are followed or breached.

2.1.1 The Freedom of Executive Management.

a) *Government*

In UK corporation do not have to face some of the worst manifestation of interference by Ministers or civil servants: management does not have to seek permission for most things, nor does it need to bribe its way forward. In most sectors of UK commences and industry regulation is far more comprehensive than it was even before new regulations come in place after UK joined the European Union. Regulations is based on the assumptions that the modern world has become so complete that citizens, however careful cannot adequately protect themselves from the dangers of the goods and services they procure. The doctrine of '*caveat emptier*' is not quite dead.

b) *Fear of Litigation*

Directors of UK companies are seldom sued and on the whole do not fear litigation unlike in the US. The causes of action which apply are few because the machinery is not available.

c) *Fear of Displacement*

You can only hope to get the best from your managers if they can operate with sufficient confidence to take care of the enterprise in the medium and long term. Confidence cannot be measured. An individual must have a suitable standard by which to judge his own attributes ; if managers feel forced constantly to study their stock price it tells us something about the pressures on them which inevitably affect their decision making.

Displacement will occur eventually for incompetence either by shunting the culprit sideways or outright dismissal. What is of concern is the displacement of the competent following a merger or prohibiting.

In the UK those who made fortunes from the creators of conglomerates some year ago during the labour government are now making second fortunes from dismembering them by merges, acquisition and buyouts.

When the government decided to privatise its fully owned statutory bodies it affects those who earn their living from these companies. Employees from the General

Manager to the office boys have to accept that others now can settle their livelihoods and prospects, changing at will the implicit contracts on which they entered employment. It is for considerations whether they should have some voice; people are not chattels.

Another issue in corporate governance is time. It is an element of planing, decision making, and execution, is a crucial aspect of competitive performance in a number of industry sectors. The role of time is company activities include:

- The time required to commercialise a new product or service that depends on the development and deployment if new technology.
- the planing time frames (operating. Business and strategic) for which a company develops actions it chooses to pursue
- The time needed to build critical skill bases and teams, or to develop or deploy long-lived assets needed to improve company productivity
- The expected time between investment in development of a new technology and payoff.
- The time it takes for a new market of develop and become saturated. The length of time ahead that an organisation can plan because of uncertainties affecting forecasts (procurement cycles , legal changes, or regulatory practices) for the industry.
- The time it takes for a competitor for copy a product and get that product to the market.

- The time scale embedded in the employee incentive and reward scheme.

Company management and governance practices play a fundamental role in determining time horizon. Companies in industries with long product or market development cycle times must long investment horizon. Effective management can collect and organise financial, human and technological resources for competitive commercial activities with playback far in the future. Within the same industry companies with different time horizons and different levels of success can be found. This depends on their methods and governance.

2.1.2 Accountability

If the system of accountability works well high standards will tend to be set; if management consistently fail to maintain them, accountability leads to remedial action. The German and Japanese systems with their combination of informal networks and formal structure seem to be able to achieve these objectives pretty well - not perfectly, since humans are fallible - but generally to a high degree of effectiveness. The UK system relies mainly on the boards and to a limited degree on shareholders.

The accountability of management to the board as a whole is by common consent the bedrock of the system.

2.1.3 The Law

The legal framework defines the governance of companies in the Companies Act is sketchy. It barely mentions boards at all, let alone ascribing functions to them or requiring them to meet at regular intervals. There is no need in law for a company to have a board, therefore no requirement for a chairman of the board. The duties of the directors are minimal. Defenders of the Act praise its '*flexibility*.'

The present problem with the duties of the directors not legally spelt out can be described as follows:-

“Non-executive directors have responsibilities as advisers, as decision makers and as monitors; yet there are serious incompatibilities among these functions. There is a clear distinction between the role of the adviser who provides input into a decision based on specific; if necessarily limited, expertise and perspective, and those who make decisions. One cannot both make decisions and assess the performance of those who do. Non-executive directorship is a weak institution in practice.”

Audit Committees composing of independent directors was recommended by the Cadbury Committee but has no power to ensure it being enforced. The New York Stock exchange made it mandatory for boards to have independent directors in 1978.

For outside directors to assume a more active role in corporate monitoring requires the outside directors understand that their duty requires more of them than simply acting as advisers and requires more than acting once crisis has arises. It requires that directors understand and assume the burden of active long-term monitoring. Besides

understanding the scope of their responsibility the outside directors must form a sympathetic and productive relationship with the Chief Executive Officer and the acknowledgement by the Chief Executive Officer of the legitimacy of the monitoring role. It requires a commitment of time and resources, especially information, and sometimes independent advice.

Problems exists with boards of public companies where the Chief Executive Officer (executive directors) are in effect the controlling shareholders. The debacle of the Maxwell empire was a case in point. There is a need of a safeguard against the domineering and capricious.

2.1.4 **The Role of the Shareholders**

Many shareholders do not see their interests, or those on whose behalf they hold shares, being served by their taking any interest in or playing any part in corporate governance. This is especially so for the minority shareholders. They monitor the performance of the companies in which they invest, not in the sense of vetting every move or double guessing management, but by being concerned about a few strategic issues a company faces every decade and about the continual competence of its leadership.

2.1.5 **Big, Private Companies.**

After a company reaches a certain size, whether quoted or unquoted, its potential for doing damage is great enough to warrant public interest in its governance. ~~The~~

damage that may be inflicted on all stakeholders reaches the point where it becomes a public policy issue. (TENAGA NASIONAL BERHAD is one such company where the whole country's industrial growth will be at stake if it fails to deliver).

2.1.6 **The 'Other Constituencies Debate'.**

Management has a great many interests to consider other than the shareholders, such as employees, customers, suppliers, bankers, and the community. It cannot hope to succeed unless it takes all these interests properly into account. At the end of the day, however, it has to be able to service its debt and attract new capital when it needs it. If it fails in this it will lose control - or the company will fail.

2.1.7 **The Role of Banks.**

In UK and generally as a whole banks provide short term financing. In Germany and Japan however major source of long term finance are from banks which is managed better both for the sake of the borrower and lender which is accompanied by a relationship which is far deeper. This implies a willingness on the part of banks to incur the costs such relationship implies, and also considerable experience among those who deal with companies- knowing the right questions and understand the answers and to be able to give sound advice. The firm must be prepared to give full information - not, for instance, scurrying off to borrow secretly elsewhere, and to bear some of the costs a supportive relationship implies. In UK the quality of relationship between industry and its suppliers of loan and risk capital is deficient. The Bank's role in corporate governance is negligible, except in rescue cases where they sometimes require management changes as part of the price for continuing support.

2.1.8 Trustees

The Maxwell case has raised questions about the powers and duties of trustees in relation to dishonesty.

2.1.9 Review

Many directors believe the UK governance systems works poorly. A major review is needed where the government must be ready to put its own shoulder to the wheel of enforcement. As it is, government departments are squeezed between contending pressures. They may have doubts about what exist but be concerned about offending those who would be affected by change. There is a call to amend the companies Act to make the role of the board, composition and including non-executive directors, audit committees and the way directors are chosen to be much clearer. Another item being examined is the possibility of letting shareholders choose between two alternative types of structure - single- or two tier.

2.1.10 Conclusion.

There is a part for everyone to play - chairmen, boards, employees, government, academics, shareholders and banks. The nation will be best served by sound corporate governance to ensure that each has its share of competent business that do not needlessly fail.

2.2 The Cadbury Committee Report:

Financial Aspects of Corporate Governance.

In 1992 the Cadbury Committee's Report: Financial Aspects of Corporate Governance was published. One of its content is the Cadbury Code:

1. The Code of Best Practice

2. Audit Committees

The report makes recommendations as the duties and roles of the board of directors, Non-executive directors plus recommendations. It also include the report on Audit Committees. This Code of Best Practice recommends what the Companies act 1985 have been vague about.(Appendix 1)

Appendix

The Report of the Cadbury Committee on The Financial Aspects of Corporate Governance: The Code of Best Practice

Introduction

1 The Committee was set up in May 1991 by the Financial Reporting Council, the London Stock Exchange, and the accountancy profession to address the financial aspects of corporate governance.

2 The Committee issued a draft report for public comment on 27 May 1992. Its final report, taking account of submissions made during the consultation period and incorporating a Code of Best Practice, was published on 1 December 1992. This extract from the report sets out the text of the Code. It also sets out, as Notes, a number of further recommendations on good practice drawn from the body of the report.

3 The Committee's central recommendation is that the boards of all listed companies registered in the United Kingdom should comply with the Code. The Committee encourages as many other companies as possible to aim at meeting its requirements.

4 The Committee also recommends:

- (a) that listed companies reporting in respect of years ending after 30 June 1993 should make a statement in their report and accounts about their compliance with the Code and identify and give reasons for any areas of non-compliance;
- (b) that companies' statements of compliance should be reviewed by the auditors before publication. The review by the auditors should cover only those parts of the compliance statement which relate to provisions of the Code where compliance can be objectively verified.

5 The publication of a statement of compliance, reviewed by the auditors, is to be made a continuing obligation of listing by the London Stock Exchange.

6 The Committee recommends that its sponsors, convened by the Financial Reporting Council, should appoint a new Committee by the end of June 1995 to examine how far compliance with the Code

progressed, how far its other recommendations have been implemented, and whether the Code needs amending. In the meantime the present Committee will remain responsible for reviewing the implementation of its proposals.

7 The Committee has made clear that the Code is to be followed by individuals and boards in the light of their own particular circumstances. They are responsible for ensuring that their actions meet the requirements of the Code and in interpreting it they should give precedence to substance over form.

8 The Committee recognises that smaller listed companies may initially have difficulty in complying with some aspects of the Code. The boards of smaller listed companies who cannot, for the time being, comply with parts of the Code should note that they may instead give their reasons for non-compliance. The Committee believes, however, that full compliance will bring benefits to the boards of companies and that it should be their objective to ensure that the benefits are achieved. In particular, the appointment of appropriate non-executive directors should make a positive contribution to the development of their businesses.

Code of Best Practice

the Board of Directors

1 The board should meet regularly, retain full and effective control over the company and exercise its authority over the executive management.

2 There should be a clearly accepted division of responsibilities at the head of a company, which ensures a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognised senior member.

3 The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions. (Note 1)

4 The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands. (Note 2)

5 There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense. (Note 3)

6 All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the company secretary should be a matter for the board as a whole.

Non-executive Directors

1 Non-executive directors should bring an independent judgement to bear on issues of strategy, performance, resources, including key appointments, and standards of conduct.

2 The majority should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement, apart from shareholding. Their fees should reflect the time which they commit to the company. (Notes 4 and 5)

3 Non-executive directors should be appointed for specified terms and reappointment should not be automatic. (Note 6)

4 Non-executive directors should be selected through a formal process and both this process and the appointment should be a matter for the board as a whole. (Note 7)

Executive Directors

1 Directors' service contracts should not exceed three years without shareholders' approval. (Note 8)

3.2 There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest-paid UK director, including pension contributions and stock options. Separate figures should be given for salary and performance-related elements and the basis on which performance measured should be explained.

3.3 Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors. (Note 9)

Reporting and Controls

4.1 It is the board's duty to present a balanced and understandable assessment of the company's position. (Note 10)

4.2 The board should ensure that an objective and professional relationship is maintained with the auditors.

4.3 The board should establish an audit committee of at least three non-executive directors with written terms of reference which deal clearly with its authority and duties. (Note 11)

4.4 The directors should explain their responsibility for preparing the accounts next to a statement to the auditors about their reporting responsibilities. (Note 12)

4.5 The directors should report on the effectiveness of the company's system of internal control. (Note 13)

4.6 The directors should report that the business is a going concern, with supporting assumptions and qualifications as necessary. (Note 13)

Notes

These notes include further recommendations on good practice. They do not form part of the Code.

1 To meet the Committee's recommendations on the composition of sub-committees of the board, boards will require a minimum of three non-executive directors, one of whom may be the chairman of the company provided he or she is not also its executive head. Additionally, two of the three non-executive directors should be independent in the terms set out in paragraph 2.2 of the Code.

2 A schedule of matters specifically reserved for decision by the full board should be given to directors on appointment and should be kept up to date. The Committee envisages that the schedule should at least include:

- (a) acquisition and disposal of assets of the company or its subsidiaries that are material to the company;
- (b) investments, capital projects, authority levels, treasury policies and risk management policies.

The board should lay down rules to determine materiality for any transaction, and should establish clearly which transactions require multiple board signatures. The board should also agree the procedures to be followed when, exceptionally, decisions are required between board meetings.

3 The agreed procedure should be laid down formally, for example in a Board Resolution, in the articles, or in the Letter of Appointment.

4 It is for the board to decide in particular cases whether this definition of independence is met. Information about the relevant interests of directors should be disclosed in the Directors' Report.

5 The Committee regards it as good practice for non-executive directors not to participate in share option schemes and for their service as non-executive directors not to be pensionable by the company, in order to safeguard their independent position.

6 The Letter of Appointment for non-executive directors should set out their duties, term of office, remuneration, and its review.

7 The Committee regards it as good practice for a nomination committee to carry out the selection process and to make proposals to the board. A nomination committee should have a majority of non-executive directors on it and be chaired either by the chairman or a non-executive director.

8 The Committee does not intend that this provision should apply to existing contracts before they come due for renewal.

9 Membership of the remuneration committee should be set out in the Directors' Report and its chairman should be available to answer questions on remuneration principles and practice at the Annual General Meeting. Best practice is set out in PRO NED's Remuneration Committee guidelines, published 1992. (Available at the price of £5 from PRO NED, 1 Kingsway, London WC2B 6XF, telephone 071-8305.)

10 The report and accounts should contain a coherent narrative, supported by the figures, of the company's performance and prospects. Balance requires that setbacks should be dealt with as well as successes. The need for the report to be readily understood emphasises that words are as important as figures.

11 The Committee's recommendations on audit committees are as follows:

- a) They should be formally constituted as sub-committees of the main board to whom they are answerable and to whom they should report regularly; they should be given written terms of reference which deal adequately with their membership, authority and duties; and they should normally meet at least twice a year.
- b) There should be a minimum of three members. Membership should be confined to the non-executive directors of the company and a majority of the non-executives serving on the committee should be independent of the company, as defined in paragraph 2.2 of the Code.
- c) The external auditor and, where an internal audit function exists, the head of internal audit should normally attend committee meetings, as should the finance director. Other board members should also have the right to attend.
- d) The audit committee should have a discussion with the auditors at least once a year, without executive board members present, to ensure that there are no unresolved issues of concern.
- e) The audit committee should have explicit authority to investigate any matters within its terms of reference, the resources which it needs to do so, and full access to information. The committee should be able to obtain outside professional advice and if necessary to invite outsiders with relevant experience to attend meetings.
- f) Membership of the committee should be disclosed in the annual report and the chairman of the committee should be available to answer questions about its work at the Annual General Meeting.

Typical terms of reference for an audit committee, including a list of the most commonly performed duties, are set out in the Committee's full report.

12 The statement of directors' responsibilities should cover the following points:

the legal requirement for directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company (or group) as at the end of the financial year and of the profit and loss for that period;

the responsibility of the directors for maintaining adequate accounting records, for safeguarding the assets of the company (or group), and for preventing and detecting fraud and other irregularities;

confirmation that suitable accounting policies, consistently applied and supported by reasonable and prudent judgements and estimates, have been used in the preparation of the financial statements;

confirmation that applicable accounting standards have been followed, subject to any material departures disclosed and explained in the notes to the accounts. (This does not obviate the need for a formal statement in the notes to the accounts disclosing whether the accounts have been prepared in accordance with applicable accounting standards.)

The statement should be placed immediately before the auditors' report which in future will include a separate statement (currently being developed by the Auditing Practices Board) on the responsibility of auditors for expressing an opinion on the accounts.

endix. *ii. Audit Committees*

In the main body of the report the Committee recommends that all listed companies which have not already done so should establish an audit committee, and places great emphasis on the importance of properly constituted audit committees in raising standards of corporate governance.

Many UK companies already have an audit committee, and a recent research study ('Audit Committees in the United Kingdom', published by the ICAEW, April 1992) has found a steady growth in their number. Audit Committees are now established in 53% of the top 250 industrial firms in the Times 1000, and the figure rises to 66% if unlisted companies and foreign subsidiaries are excluded from the calculation. Most major UK listed financial institutions have also formed an audit committee.

Audit Committees are well established in the United States, where they have been a longstanding requirement of the New York Stock Exchange since 1978. A 1989 study revealed that 97% of major corporations had them. In Canada, they are a legal requirement.

If they operate effectively, audit committees can bring significant benefits. In particular, they have the potential to:

- improve the quality of financial reporting, by reviewing the financial statements on behalf of the Board;
- create a climate of discipline and control which will reduce the opportunity for fraud;
- enable the non-executive directors to contribute an independent judgement and play a positive role;
- help the finance director, by providing a forum in which he can raise issues of concern, and which he can use to get things done which might otherwise be difficult;
- strengthen the position of the external auditor, by providing a channel of communication and forum for issues of concern;
- provide a framework within which the external auditor can assert his independence in the event of a dispute with management;
- strengthen the position of the internal audit function, by providing a greater degree of independence from management;
- increase public confidence in the credibility and objectivity of financial statements.

The effectiveness of audit committees will be reduced, however, if they act as a barrier between the auditors and the executive directors on the main board, or if they encourage the main board to abdicate its responsibilities in the audit area, so weakening the board's collective responsibility for reviewing and approving the financial statements. They will also fall short of their potential if they lack the understanding to deal adequately with the auditing or accounting matters that they are likely to face, if they remain under the influence of any dominant personality on the main board, or if they simply get in the way and obstruct executive management, and stifle entrepreneurial skills.

Audit committees will be as good as the people on them: effectiveness depends crucially on a strong, independent chairman who has the confidence of the board and of the auditors, and on the quality of the non-executive directors. Structure is also important, however, and adherence to the following recommendations, repeated here from the main part of the report, will ensure that audit committees are soundly based.

- (a) Audit committees should be formally constituted as sub-committees of the main board to whom they are answerable and to whom they should report regularly; they should be given written terms of reference which deal adequately with their membership, authority and duties; and they should normally meet at least twice a year.
- (b) There should be a minimum of three members. Membership should be confined to the non-executive directors of the company and a majority of the non-executives serving on the committee should be independent of the company. This means that apart from their directors' fees and shareholdings, they should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgement as a committee member. It is for the board to decide in individual cases whether this definition is met.
- (c) The external auditor and, where an internal audit function exists, the head of internal audit should normally attend audit committee meetings, as should the finance director. Other board members should also have the right to attend.
- (d) The committee should have a discussion with the auditors, at least once a year, without executive board members present, to ensure that there are no unresolved issues of concern.
- (e) The audit committee should have explicit authority to investigate any matters within its terms of reference, the resources which it needs to do so, and full access to information. The committee should be able to obtain outside professional advice and if necessary to invite outsiders with relevant experience to attend meetings.
- (f) Membership of the committee should be disclosed in the annual report and the chairman of the committee should be available to answer questions about its work at the Annual General Meeting.

7 Specimen terms of reference for an audit committee, compiled from the many examples that are available, are annexed. They are intended simply as a guide for companies who will wish to adapt and build on them to suit their own circum-

ances. They will particularly need tailoring for group rather than single company audit committees. The list of duties in the annex reflects the most commonly performed duties in the UK and the US but no single set of duties has emerged as standard practice.

There are many excellent publications on audit committees. The Committee's objective is not to rewrite them but to secure the widespread adoption of best practice. For further discussion of the duties and functioning of audit committees, readers are referred in particular to:

- Chapter 3 of the Report by the Institute of Chartered Accountants of Scotland entitled 'Corporate Governance—Directors' Responsibilities for Financial Statements', February 1992
- Guidance booklets produced by individual firms of accountants
- Chapter 2, section IV of the Report of the National Commission on Fraudulent Financial Reporting (the Treadway Commission), USA, October 1987
- 'Audit Committees in the United Kingdom' by P. Collier, published by the Institute of Chartered Accountants of England and Wales, April 1992.

[APPENDIX 2]

2.3 Corporate Governance: The Board of Directors

(Charles A. Anderson and Robert H. Anthony

Harvard Business Review)

This article describes the nature and function of the board of directors which has the ultimate responsibility for the governance of a corporation in US setting. It also describes the work of three important board committees: the compensation committee, the audit committee and the finance committee.

In the US every corporation is required by law to have a board of directors. Its legal function is to govern the affairs of the corporation. In small companies where the Chief Executive Officer is also the controlling shareholder the Chief Executive governs, and the board acts primarily as an adviser.

2.3.1 SIZE AND COMPOSITION OF THE BOARD.

In 1989 the typical size of the board was 4. Large boards delegate much of their work to an executive committee. Shareholders believe it is in their best interests for the board to have a significant degree of independence from the company's management.

Principally sources of non-executive directors are Chief Executive Officers and senior officers of other corporations (but not competitors). Others are lawyers, bankers, physician, scientists and engineers, retired government officials and academics. The Chief Executive Officer and perhaps, one or two senior members of management are typically members of the board. Board members are elected at the annual meeting of shareholders. The shareholders almost always elect a slate proposed by the incumbent board; so, the board is self-perpetuating. The process of selecting candidates for filling board vacancies is an important board function. It is becoming increasingly common to have staggered terms, that is, to elect one third of the board each year, for a three year term.

2.3.2 RELATION TO THE CHIEF EXECUTIVE OFFICER.

The board of directors “direct” and the Chief Executive Officer “executes” the board’s directions, but these terms are not accurate description of the roles of these two parties. In the majority of companies, the Chief Executive Officer is also the Chairman of the Board of directors and is the principal architect of policies, as well as being responsible for their execution. The Chief Executive is indeed the “*Chief* ”.

The board selects the Chief Executive Officer. Believing him to be the best available person for the job, the board wants to give the Chief Executive Officer its full support. To do less would inhibit the Chief Executive Officer from doing the job that the board expects. The Chief Executive Officer is accountable to the board and is subject to termination if the board decides that his or her performance is unsatisfactory.

The appropriate relationship is one of trust. The board must believe beyond any question that the Chief Executive Officer is completely trustworthy who will provide the board with all the information it wants and needs, will withhold nothing, and will not start arguments to support a preconceived position. Conversely, the Chief Executive Officer must believe that he has full support of the board.

2.3.3 Appraising the Chief Executive Officer

A major responsibility of the board is to appraise the Chief Executive Officer. If performance is below expectations, there are two possible explanations. Either the Chief Executive Officer is to be blamed or external influences are responsible. If both factors are involved the directors have to judge their relative importance. The directors role vis-à-vis the Chief Executive Officer is described as “challenging, yet supportive and positive”.

Louis B. Cabot, former chairman of Cabot Corporation wrote to Pee Central Corporation saying:- “Directors should not be the managers of a business, but they should ensure the excellence of its management’s performance. To do this, they have to measure that performance against agreed upon yardsticks”.

2.3.4 The Next Chief Executive Officer

One of the important jobs that the board assigns to the Chief Executive Officer is to develop a succession plan for the company’s senior managers. This is to identify potential Chief Executive Officer candidates, provide them with opportunities for growth, and groom them for higher level positions.

When the board fail to deal effectively with succession, it is often necessary to source from outside the company's Chief Executive Officer. This increases the risk and usually a symptom that the board has neglected this important responsibility. Chances for a successful succession are much higher when the Chief Executive Officer is from within.

2.3.5 NORMAL BOARD MEETINGS

Most boards meet 8 to 10 times a year. Typically meetings last for two hours.

2.3.5.1 Pre-meeting Material.

Board members are sent an agenda and a packet of material on topics to be discussed at the meeting prior to the meeting:

A. Current Situation and Outlook.

1. Look at performance and forecast.
2. Comparison of actual performance for current period and YTD with the budget.
3. Comparison of actual performance with performance for the same periods previous year. Changes in the business and economy since the prior year are highlighted to see how they affect the performance.

Variances are discussed between actual and budget. What steps will be taken to eliminate shortcomings or what adjustments can be made to unforeseen external forces.

Preparing and presenting to the board a report on the companies performance is an important discipline for management.

2.3.5.2 Other Actions

Proposed actions are submitted to the board for approval. Some through the full board committees meeting held prior to the board meeting. Clarification by the proposer will be sought in these meetings. Unless new information surfaces, these recommendations are usually approved. Other items discussed will be the request for approval of capital projects, approval of signature authority for various banking connections, approval of pension plans, and approval of certain types of contracts.

2.3.5.3 Education

A division manager assisted by senior associates may make a presentation about the activities of the division for educational experience of the directors. This is the opportunity to appraise company executive officers and their colleagues.

2.3.5.4 Setting Standards

Through written policy statements but primarily through their attitudes, directors communicate to management, the standards that they believe should govern the organisation's actions.

Economic Standards - by setting targets and goals they believe the company can and should attain e.g. market share, earnings per share, return on investment believed to be attainable. Board generally relies on management recommendations, but the enthusiasm, or lack of it, given conveys important information to management.

Ethical standards are reflected by the way the directors react to specific ethical issues. E.g. women, minority groups, drinking problems, community work, environment etc. Written policy statement are always very perfect.

2.3.6 STRATEGY

A company should have a set of strategy that are well thought out, and well understood by the organisation. Strategies include the industry in which the company has decided to operate, its product lines within the industry, the price and quality position of these products, the targeted customers and markets, distribution channels, marketing policies, manufacturing policies and financial policies.

Management normally must take the initiative, carry out analysis and recommends to the board. “ *A responsible and effective board should require of its management a unique and durable corporate strategy, review it periodically for its validity, use it as the reference point for all other board decisions, and share with management the risks associated with the adoption*”.

They must ensure that management has a sound process for developing them.

2.3.6.1 Strategy Meetings

These are arranged with the presence of directors and senior management at retreats for 2 to 3 days with minimum distractions. It is held normally once in 2 years where informal discussion and reflection is done. The meeting is to explain the strategies and the foundation on which they are based. The quality of the rationale for the strategies is an indication of the competence of senior management and of the managers of the division concerned. Major capital expenditure proposals, acquisitions and divestitures, and financing proposals must be ensured by the board to be consistent with the adopted strategy. Otherwise, the company may drift off course into serious trouble.

2.3.7 DEALING WITH MAJOR CRISIS.

Boards must deal with crisis when there is need for it. Special board meeting must be held.(e.g. during the power shortage in 1992-93 and the Penang Bridge cable fault). Other occasions when this is demanded is firing the Chief Executive Officer and dealing with take-over attempts.

a) Firing the Chief Executive Officer

Many criticised that boards have been slow to take action when it becomes clear that the Chief Executive Officer should be replaced. E.g. alcoholics and poor corporate performance. Sometimes it is not easy to pinpoint who is at fault. Replacing the Chief Executive Officer precipitate a crisis, not only for the board, but to the entire

organisation. The board must be prepared to announce a succession and to deal with the problems inherent in the transfer of executive authority.

b) Unfriendly take-over attempts.

In take-over situations the board, as the representative of the shareholders, may have different interests from those of the management. Senior management of target companies normally becomes unemployed after a successful hostile take-over. Directors must exercise great care to ensure that their decisions are in the shareholders interest. What consideration is there to give to the interests of other parties, such as employees, communities and customers who could be affected by a change in ownership or a break up of the company? They run the risk of a lawsuit ,alleging that they have not discharged their fiduciary duty.

Boards can take steps to prepare for an hostile take-over attempt. This crisis is the ultimate test of board's capability.

2.3.8 DELEGATION OF BOARD WORK

Much of the work done of the board is done in committees held prior to the full board meeting. They hear reports and prepare summaries and recommendations for full board action. Board meetings have only a limited time for thorough discussion to take place. The three common committees are:

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___2.3.8.1 THE COMPENSATION COMMITTEE.

It determines Chief Executive Officer's compensation and other principal corporate officers after getting recommendation from a compensation committee. It should be related to performance, competitive in the market and has motivational element. Board remuneration arrangement is also recommended by the compensation committee.

2.3.8.2 THE AUDIT COMMITTEE.

It is responsible for making certain that the company's published financial statements are fairly presented, that they are in conformance with the established accounting standards and that the company's internal control system is effective. It deals with alleged misconduct, violation of code of ethics and ratifies selection of external auditor. All companies listed in the stock exchange must have this committee.

Audit Committee's Activities. Probing for possible occurrence of situations described above and also asking similar questions of external auditors for inadequate disclosure.

- Internal Control - External auditors writes a management letter listing possible weaknesses in the company's control system that have come to the auditor's attention, together with recommendation for correcting the situation. Internal auditors also write reports on the same subject. Audit committees follow up on these reports by asking management to respond to the criticisms. If management disagree with the recommended course of action, its rationale is considered and either accepted or rejected. The committee keeps an agenda until the problem is resolved if action has been decided. The audit committee must be assured that the Chief Executive Officer has given the internal audit staff complete freedom to do its work. The head of internal audit must have direct

access to the audit committee chairman if situation warrant immediate board attention is uncovered. The internal auditor's primary obligation is to the audit committee. The committee should guarantee that the internal auditor will be fully protected against possible retaliation.

Internal Audit Organisation The committee must ensure the adequacy of the internal audit organisation, numbers and competency. Computer system audit competency must be available.

2.3.8.3 THE FINANCE COMMITTEE.

The board is responsible to the shareholders for monitoring the corporation's financial health and for assuring that its financial viability is maintained. The finance committee makes recommendations on these matters. It analyses proposed capital budgets, regular reviews of the company's financial performances as reported on the income statement, and its financial condition as reported in the balance sheet. It reviews estimated financial requirements over the next several years and decides how these requirements will be met. It also recommends dividends, pension fund matters, health care, other post-employment benefits, reviews the policies that determine the annual contribution to the funds and the performance of the firm or firms that invest these funds.

- **Analysis of Financial Policies**- is recommend by management who evaluates risk and return the finance committee is responsible to probe management's rationale for its

policies to ensure thorough work has been done and the policies are within acceptable limits.

- **Dividend Declaration**- A financial policy that is specifically a matter for board decision is the declaration of dividends- paid only if the company declares them. The finance committee must weigh the interest of the corporation that requires capital for growth against the interest of shareholders who may have the opportunity to make profitable alternative investment. Giving a certain pay-out ratio, increasing dividend over time or a stable dividend, is well regarded by investors.

- **Pension Funds** - The finance committee have to consider how much is required to be added to the fund and where to invest the fund in.

The above briefly describes the corporate governance being generally practised in US. There is a very strong similarity with the governance system in the UK.

[APPENDIX 3]

2.4 **EMPOWERING THE BOARD**

How do Boards Draw the Line between Monitoring Performance and Managing the Company (Jay W. Lorsch Harvard Business Review Jan-Feb. 1995)

In the US and UK and also quite common in Malaysia nowadays where the Chief Executive Officer is the most dominant person in the corporation, the corporate leaders have considered a powerful, active board to be a nuisance at best and a force that could interfere in the management of the company at worst. They have preferred directors who are content to offer their council when asked and to support management in times of crisis. However, there is a growing trend in the US to empower directors. It is recognised that empowered directors can help them and their companies and give maximum benefit to Chief Executive Officers, shareholders, and the national. In doing this the relationship between the Chief Executive Officer and the board of outside directors have to be redefined. Outside directors must recognise and respect the boundary between monitoring management and actually managing the company. A new form of teamwork in which directors and top-level managers understand each other's roles and responsibilities and effectively to achieve corporate success. The Chief Executive Officer will retain the power to lead the company while obtaining guidance of informed and active directors as long as corporate performance is satisfactory.

The trend towards a more empowered board as a result of more active institutional investors putting pressure on the boards to challenge management decisions and policies. SEC regulations have facilitated institutional shareholders to communicate with one another about corporate governance issues. Recently, some performance difficulties of many major companies and the removal of their Chief Executive Officers have generated more public interest in active boards. Corporate governance and competitiveness are found to have been linked.

Finally, controversy about Chief Executive Officers compensation which is perceived to be excessive in relation to companies' performance fuelled such effort to empower directors.

Organisations that have moved towards empowering the board are Campbell Soup Company, Mallinkrodt, Stanhome, Dayton Hudson Corporation, Medtronic and Lukens.

There is no evidence that the Chief Executive Officer and top management found their power to lead the company diminished. Instead directors are better informed communicate their ideas more effectively and generally provide better advice with understanding and enthusiasm. Many Chief Executive Officers worry if outside directors become more forceful monitors their usefulness as advisors will be diminished. However, to perform well as advisers and monitors access to information and time to discuss it with one another and management are essential. The old paradigm for boards to remain passive until there is a crisis implies directors to be like fire-fighters who sit around the station until there is a fire to spring into action. Even fire-fighters practise in order to cope with an emergency, and so must directors otherwise they will not be able to move as quickly as required. Boards who have to remove Chief Executive Officer because of poor

corporate performance, usually, have failed to monitor management and company performance in years before the crisis. The most difficult crisis normally occur gradually.
(Power shortage in 1992-93)

The processes and procedures that should be followed depends on the confidence the directors have in the Chief Executive Officer and the nature of the relationship between them. A new Chief Executive Officer needs to be monitored more frequently and carefully. If the Chief Executive Officer has been leading the organisation successfully for several years less detailed annual assessment would be more effective. The company's performance also influence the board's thinking about empowerment. In difficult times directors will clearly want to be more involved in understanding management thinking to ensure potential problems will not be overlooked. The board's role as monitor depend on the complexity of the decision s facing managers and directors. It could be number of products, markets, countries or the rate of technological and market changes in the companies business. Directors must have information they need to focus on the right issues and use their time together productively.

2.4.1 The Sources and Limits of Outside Director's Power.

The directors' mandate to govern a company comes from the laws of the country in which it is incorporated. Business and affairs of a corporation shall be run by directors who normally delegate the responsibility of operating the company to management. They are expected to demonstrate care and loyalty(have no conflict of interest) and to exercise business judgement. These broad duties have been interpreted and refined by court decisions. SEC have developed rules and regulations that further define directors duties.

SEC require audit committees of outside directors and compensation committees should report top management's pay to shareholders.

With such broad duties the real power and ability to govern depends on the knowledge and the cohesion as a group and its relationships with the Chief Executive Officer and other top executives. Since the Chief Executive Officer is a full time employee even the most well intentioned Chief Executive Officer has a real power advantage over the outside directors. Therefore the solidarity of the board members is the source of power for the board. Some company's board practices inhibited directors from communicating freely. An empowered board can facilitate the necessary dialogue and build solidarity among its members.

2.4.2 *Characteristics of an Empowered Board.*

- ◇ Most of the directors come from outside the company and have no other relationship with it.
- ◇ The board is small enough to be a cohesive group, have common objectives, dedicated and recognise that their obligation is to monitor the company's management and performance, not to manage the company.
- ◇ Members represent a range of business and leadership experiences, necessary to understand the issues in business.
- ◇ Members communicate freely with one another in both committee meetings, board meetings and outside- with and without management.

- ◇ If the Chief Executive Officer is also the Chairman of the board, the outside directors select a leader from among themselves. He leads in deliberations when they meet without management and works closely with the Chief Executive Officer to plan board activities.
- ◇ Committees are made up entirely of outside directors. While management is committed on matters discussed within the committees, they also meet regularly without management.
- ◇ Members received information about the company in a format that is intelligible and enables them to understand their company's performance relative to the competition's.

Three activities are crucial if the board is to be an effective monitor: ensuring legal and ethical conduct by the corporation's officers and employees, approving the company's strategic direction and evaluating its progress; selecting, evaluating, rewarding, and if necessary removing the Chief Executive Officer, and ensuring that appropriate top-management succession plans are in place.

Audit committees made up of outside directors in all public companies ensure that financial reports are accurate, that accounting rules are followed, and that assets are not misappropriated. It also review officers and employees compliance with other rules and standards of conduct. Board also use their power to review and approve corporate strategy and to evaluate Chief Executive Officer's performance and succession planning at least annually. In some companies managers inform directors of their intended strategy either through briefing books provided in advance or through oral presentations made at a strategic retreat. It is to be an open no-holds barred discussion of changes in the industry.

The board must review the progress of the strategy carefully and corrective action taken if necessary.

A thorough evaluation process of the Chief Executive Officer is still needed for the board if monitoring is to succeed. Finally, board's monitoring work is implementing a schedule of planning and review for the board and management.

Finally, board's monitoring work is implementing a schedule of planning and review for the board and management.

2.4.3 Effective Empowerment

The focus in US of empowered directors is paid on Chief Executive Officer's performance evaluation and corporate strategy. This is to avoid problems that plagued many major companies when the directors and managers failed to recognise changes in technology and markets which affect them.

Evaluating the Chief Executive Officer annually is central to effective monitoring. It is a step toward empowering the board because it deliver a clear message to both the Chief Executive Officer and the directors that the former is accountable to the latter. Directors can engage in an open and frank discussion about the Chief Executive Officers and the company's performances at least once a year. An evaluation benefits the Chief Executive Officer personally by directly communicating the director's concerns and

suggestions for improvement, as well as their praise. The criteria for effective evaluation are:-

- ◆ It should be conducted at least annually
- ◆ It should assess the company's annual and long-term performance in comparison with that of similar organisations.
- ◆ Chief Executive Officer's accomplishment should be judged against individual goals as well as against the goals for the company's performance.
- ◆ The Chief Executive Officer should provide an assessment of his own performance.
- ◆ The outside directors should make their assessments individually.
- ◆ The Chief Executive Officer should discuss the evaluation face-to-face with one or more outside directors and should have the opportunity to discuss his reactions to the review with all the directors.

When or how deeply the board should be involved in strategic matters is less clear and more controversial. Where to draw the Line that separates the board's prerogatives and management is of a concern to both managers and directors. Once a director crosses

the line, the board has real problems, because, the board should not run the company. At minimum, directors should approve corporate strategy, review and evaluate the results.

To contribute effectively to discussions of corporate strategy and to evaluate Chief Executive Officer's performance competently, directors obviously need adequate knowledge not just information. I.e. in context and content. Directors receive information in two ways- by written reports in terms of financial reports as well as specific proposals to be discussed in a meeting, or, through oral presentations by managers especially by the Chief Executive Officer himself, which is the central feature of most board meeting. However, companies faced with long-term decline because of rapidly changing market and technological conditions the above approach is not adequate. Information about products, technology and markets traditionally were not judged to be within the board's purview. Therefore, besides knowledge about the company's financial results, which are historical performance, the board must also know about the company's progress in accomplishing its strategy including progress in developing and acquiring new technology, new products and services, and new markets. It means understanding changing customer requirements and what competitors are doing. Directors can seek more information by ensuring that data are organised efficiently and provide a concise but comprehensive overview of the company's strategic progress. Data should be sent to the directors in advance so that they can study them, formulate questions, and identify issues to be discussed at board meetings.

Empowered boards must periodically monitor its own performance. This enables all directors, both insiders and outsiders, to contribute their ideas for improvement and

thus be committed to any change in process. How well is the process of Chief Executive Officer evaluation working? How effectively do the directors use their time together? How well are board committees functioning? Are directors getting adequate information, and is well organised. Those are the major concerns that should be addressed to make boards more effective monitors.

In the past decade, employee empowerment has improved productivity and quality, allowing many US companies to be more competitive in the global market place. Empowering directors will enable them to deal more successfully with the turbulence and demands of the future.

[APPENDIX 4]

2.5 Redrawing the Line between the Board and the Chief Executive Officer

- Can an Empowered Board and a Strong Chief Executive Officer Coexist?
(Harvard Business Review March-April 1995)

Virtually all major public corporations now acknowledge that they have no choice but make their management more accountable to their shareholders and that, in general, strengthening the hand of outside directors is the logical way to do so. The objective is to make the board a more effective watchdog without undermining management's ability to run the business. Boards need to figure out how to distance themselves more from their Chief Executive Officers without turning a constructive relationship into an adversarial one. In trying to strike a balance, directors and Chief Executive Officers are debating several fundamental questions including:-

- What role should a board dominated by outside directors play in formulating and reviewing the company's strategy.
- What rights should outside directors have to obtain information on their own, bypassing the Chief Executive Officer?
- How should boards evaluate management, especially the Chief Executive Officer?

- How a board ensure that its members have the expertise to judge management's performance?
- What are the advantages and disadvantages of splitting the board's chair and the Chief Executive Officer's job between two people instead of entrusting them to one person.

The following are some views expressed by leading US corporate figures:-

2.5.1 *John G. Small*(Non-executive chairman of the board of General Motors Corporation)

The guidelines on corporate governance on the board of General Motors adopted in 1994 have drawn a lot of attention from investment community, in corporate management circles and in the business press. The guidelines represented a formal recording of the way interaction with management for the past couple of years. It is the codification of decisions the board had already made about how it should conduct its own affairs. The guidelines should evolve not to remain static. The guidelines recognises that the board of directors is separate from the management of the company - and that the board has separate and specific obligations to the owners of the business.

Back to the basic duty to see that the company is managed in a way that serves the owners' interest in successfully perpetuating the business it has to act as an independent monitor of management, asking the tough questions that management might not ask itself. The board independent outside directors are able to help management by bringing different perspectives to the problems the company faces without carrying the bias of a

practises rotating committee assignments and chairmanships at about 5-year intervals. The board has 4 members which can fluctuate when an attractive candidate is available.

- The board should have the basic responsibility for selecting new director candidates.

The GENERAL MOTORS board annually reviews the skills and characteristics it desires including diversity, age, professional background and business experience. The Chief Executive Officer is included in the process. It is the board, not management, who is accountable to the shareholders.

- The board should have a process to review its performance.

It needs to determine systematically whether it is adequately monitoring management and providing effective council.

- The board's independent directors should conduct regularly scheduled reviews of the Chief Executive Officer's and key executive's performance.

It should be based on established, objective criteria, including the performance of the business, accomplishment of long-term strategic business objectives and the development of managers.

- The board must understand and fully endorse the company's long term strategies.

The board must devote adequate time and attention to its single most important responsibility: selection of the Chief Executive Officer. It gets reports on succession planning from the Chief Executive Officer,

recommendations for successors to senior managers and read management development report.

In GENERAL MOTORS , senior managers routinely attend the regular full-board meetings and other managers are invited when relevant subjects are under consideration.

Although it is advocated that directors should have more independence and should actively monitor management there should not be an adversarial relationship with management. It should be sympathetic and productive with mutual respect and trust between directors and the Chief Executive Officer. Strong board should not be a threat to management but a strength to management.

2.5.2 *Alan J. Patricoff* (Chairman and founder of Patricoff and Company the US member of Apex Group)

Having represented private equity investors on the boards of companies for many years and have served as an independent director on the boards of both public and private companies he highlighted how difficult it is to be independent. To be truly independent he believes laws, regulations and/or voluntary guidelines are necessary. Measures to ensure that ownership is faithfully represented in the corporate boardroom and to create safe harbours where independent directors can express views that differ from management's. Even if outside directors dominate a given board in numbers, it is very tough to be truly independent without clashing with management. Outside directors

although should not create strategy or run the business, they must be able to influence management's decision.

He describes the best Chief Executive Officer as a strong entrepreneurial leader who is firm in running the business and yet open minded. He has great deal of self-confidence, a great understanding of the particular business, an ability to listen seriously to well-thought out advice without feeling threatened. He appreciates that a director who is on the outside looking in can see what management cannot.

Professional business relationship with the Chief Executive Officer can change into a personal relationship which makes being independent difficult for outside directors. The more that the business aspect of the relationship is preserved and the social aspect is restricted, the greater is the likelihood that the outside director will be able to preserve his independence.

Outside directors, especially those serving on critical committees, should be required to have certain skills, at least reading financial statements, finances and economics of the business. He even suggested the outside board members should be certified. For the outside directors to be effective, board committees must be able without management permission to call an outside specialists who can provide truly objective assessment of a company's internal operations.

Limits on both the minimum and maximum time a director could serve would encourage directors to act independently to prevent inbreeding. A minimum of 3 years and maximum 10 would provide continuity as well as turnover.

- There should be a voluntary guidelines that encourages companies to establish formal programs aimed at making senior managers below the Chief Executive Officer level feel comfortable in talking freely with outside directors.
- Internal auditors should report directly to the board's audit committee. Their report should give the outside directors, as well as the company itself, detailed and constructive insight into the internal workings of the business.
- Shareholders/institutional shareholders with at least 5% or more who has held company share greater than 1 year should be represented in the board through the company's proxy mechanism.
- Director's cash compensation should be reduced but increasing the amount they are paid in stock options. Directors must have a personal stake in the ultimate performance of a company's shares.

In conclusion, while recommending some legal modifications to the corporate systems, all stakeholders must be willing to modify their relationships both to the company and to each other for it to be successful.

2.5.3 *Denys Henderson* (Formerly chairman and Chief Executive Officer of ICI - now non-executive chairman of Rank Organisation)

Giving the jobs of board chairman and Chief Executive Officer to two separate people can help strengthen corporate governance. This view is gaining credence following the recent publication of the Cadbury Code of Conduct on the subject. He

believes however that success depends not only on having well qualified people in both jobs but also on establishing their personal chemistry.

There are two kinds of non-executive chairman: the insider who has been the Chief Executive Officer and the outsider who has never belonged to the company's management. The advantage of an outsider is that he can be thoroughly objective, lacking both detailed knowledge of the company or long-standing relationship with its managers, is less likely to try to interfere with the Chief Executive Officer's job of running the business. On the other hand, the insider has a much better data base and would know the company inside out.

The relationship between non-executive chairman with the Chief Executive Officer is crucial if the two jobs are separated. If the chemistry is not good, the board and the company will be in serious trouble. It is critical that the Chief Executive Officer has to be involved in choosing a new non-executive chairman, especially if that person is coming from outside. It is important that the chairman and the Chief Executive Officer agree from the beginning what each person's role will be. Otherwise that would lead to a fight between them. Fundamentally, the non-executive chairman's job is to manage the board, overseeing how it carries out its major responsibilities including monitoring the company's financial performance, ensuring that there is adequate succession planning for senior management posts, and constantly monitoring corporate strategy and management structure.

Non-executive directors led by the chairman have not only the right but also the obligation to make sure that management constantly tests its basic assumptions. Is the company in the right business? Is it covering the right territory? Is management looking far enough ahead? Is the company sufficiently competitive in its areas of expertise? Is its benchmarking of competitors sufficiently rigorous? Most importantly, is there a changing environment that means management should reconsider whether its strategies are relevant?

Both the executive chairman and Chief Executive Officer must together continually emphasise to top management and the board the importance of increasing shareholders value, ensuring managers are consulted regularly on corporate matters (increasing EPS, ROC and cash flow). They share responsibility for tending to important corporate relationships, including those with other board of directors, major institutional investors, the media, governments, employees, pensioners and customers. Having two people has added advantages of splitting the top corporate responsibilities.

Outside directors should not bypass the Chief Executive Officer to obtain information without his knowledge as this might undermine the relationship. They should tell the Chief Executive Officer if information given is unsatisfactory or misleading and they are going to get it themselves. At the end of the day, non-executive directors have to recognise that management is running the company.

2.5.4 *Bernard Marcus* (Chairman of Home Depot)

Top management tell their outside directors the good, the bad, and the ugly but the outside directors are not expected to just take their word for everything. The directors

were asked to talk to associates and customers. Outside directors serve as another set of eyes and points out things that the management is doing wrong.

A director must intimately be familiar with the goings on in the company to be able to constructively review management's strategy and to tell whether management's strategy is telling the truth about the business. Outside directors are normally given just one side of the story.

Many companies, he believes, are still picking directors for social reasons. They should be picked on the added value that they can contribute that is crucial to the current business or necessary for the future.

To ensure that outside directors are willing to make a genuine commitment, companies should require that they make a meaningful investment in the company. They either purchase stocks or by investing in an option program. The amount must be significant enough that he feels he is at risk.

2.5.6 *David W. Johnson* (Chairman, president and Chief Executive Officer of Campbell Soup Company).

In a letter written to members of the board, he wrote that the duties of the board are:

- To evaluate and advise on the Chief Executive Officer's recommendations for strategic directions and plans
- To evaluate annually the Chief Executive Officer's work and succession plans, as well as the capabilities of the organisation to move in the agreed

strategic direction beginning with the compensation committee but requiring the full review by the full board. A lead director is to chair when the Chief Executive Officer's performance is being evaluated.

- To construct a motivational framework of rewards that will focus on results that build long term shareholders' wealth.

The key responsibilities of the Chief Executive Officer would be:-

- To develop strategies that would deliver strong market franchises as well as superior long term financial result.
- To measure the best competitive practices and inform the board of comparative trends.
- To inform the board regularly of the status of the key initiatives necessary to deliver the annual plan and of longer-term milestone to check the strategic course of the enterprise.

Both the board and the Chief Executive Officer should operate in an atmosphere of constructive discontent - the positive tension that comes from shared values but distinct accountabilities. The board should include no more than two members of the management- the Chief Executive Officer and the Chief Executive Officer's probable successor. Committees should consist entirely of outside directors. The Chief Executive Officer should be actively involved as a pivot and resource for such committees.

A written criteria is needed for selecting directors. The core should always be a proven track record of performance - in business management, R & D or the academic world. The proof of excellence is in leadership and the results it offers the organisation.

The major component of compensation should be in stock or stock options. They should buy and keep a substantial stake in the company's stock just as senior executive are required to do.

In committee assignments the members should include members who have special skills relevant to its work. Members with other experiences will be valuable for the long term to learn and to give varied views. Both should ensure that sharing of information and ideas between directors and executives beyond the review of annual and strategic plans to embrace innovation, new products, possible acquisitions and other strategic or significant company initiatives.

Good corporate governance is a powerful force to build business excellence. It elevates board competence and guides teamwork for shareholders gain.

[APPENDIX 5]

2.6 CORPORATE GOVERNANCE REINVENTED

The Promise of the Governed Corporation (John Pound - Harvard Business Review March-April 1995)

In the US, there have been moves being made recently with the objective of tightening control over wayward managers. Recent reforms have included conducting more formal audits of management performance, separating the position of the Chief Executive Officer and the chair, appointing lead outside director, and making company's board members more accountable to its outside shareholders. It is emphasised that the shift in power from the Chief Executive Officers to the board of external directors will by themselves create more smoothly run, profitable organisation. The fundamental problems in corporate governance , does not come from power imbalance but from the failures in the corporate decision-making process.

John Pound called the existing model of governance which most companies in US and UK are following as the “ *managed corporation*”. This model has dominated the scene for decades ever since the rise of large companies and dispersed shareholders. Senior managers are responsible for leadership and decision making. The board's function is to hire top-level managers, monitor them, and fire them if they do not perform. They cannot

assess corporate policy for themselves but must depend on the managers and directors to do so for them.

John Pound says in today's business environment the managed corporation does not make sense. He believes corporate failures are not as a result of power imbalance but rather because of a few well-intentioned decisions that are not challenged in an efficient, effective manner. Corporate failures occur because of subtle failures in the decision making process - in how boards and managers make decisions and monitor corporate progress. So corporate governance should not be about ensuring effective decision making. A reform is needed to create and maintain an efficient decision making process i.e. to prevent significant mistakes in corporate strategy and to ensure that the mistakes that do occur can be corrected quickly. He suggests a system in which senior managers and the board truly collaborate on decision making and they should actively seek input of institutional shareholders. This new model is to be called the "Governed Corporation" because it reconnects two critical parts of the corporate governance equation - shareholders and board members - to the decision making process. This model does not revolve around power shifts but instead they centre on roles and behaviour resulting in a positive change in the way of company's debate, review and policy decisions.

2.6.1 The Managed Corporation

In a managed corporation a major business question might be debated at the board level, but the assumption is that unless the managers are irrational or dishonest, or have a terrible long-term performance record, they should be given the room to implement their chosen strategy. Board members are expected to challenge policies only if there is

evidence of performance failure. Otherwise directors in disagreement should get off the board or find a new Chief Executive Officer. It discourages board members and managers from taking into account, let alone taking seriously, the opinion of outside shareholders. If shareholders persist of being heard, the more likely managers and board members will shut them out.

Errors of judgement is bound to happen because people make mistakes. Managers and directors some times stick to failed strategies or policies due to their bias towards decisions and strategies that favour their own personal strengths. Also, individuals have a natural reluctance to challenge the status quo. In hierarchical organisations, junior managers are reluctant to challenge decisions because doing so might affect their career advancement. As information travels upward, bad news is filtered out. The job of challenging falls to the Chief Executive Officer's peers and advisers - the directors. Board members also tend to be bias in favour of collegiality and consensus. Even if they suspect a particular decision is wrong, directors in most cases have little evidence on which to base a challenge. If they wrongly challenge, their reputation may be damaged.

Another drawback of the managed corporation is the political complexity of decision making at the top levels of a corporation. Personalities and differing points of view often clashes. For board members, trying to differentiate between good and bad decisions may mean delving into personal agendas.

Another factor is what called the corporate life cycle. This happens because the team of decision makers is tired. They got set in their ways. It allows mistakes to go

uncorrected until they become catastrophes and too late for corrective action. It also does not encourage corporate renewal.

2.6.2 The Governed Corporation Model

To overcome the above problems causing corporate failure of a managed corporation a new model of corporate governance is recommended. The focus is not on monitoring managers but on improving decision making. The aim is to decrease the possibility of mistakes and to increase the speed with which they are corrected. This can be done by involving directors and shareholders in decision making. Corporate governance cannot work without informal involvement of the three critical groups: directors, major shareholders and managers. Directors and shareholders can mitigate behavioural problems that cause companies to cling to bad decisions, open up decision making - fostering debate, bringing in better information, offer new perspective, and reducing false consensus and insularity. With shareholders and board involved in decision making the corporation is governed rather than managed. The board must be proactive - and effective - in the policy making process. John Pound disagree that independent directors and audit committees are key to corporate governance reform because neither helps board members participate effectively in decision making. Independence may hurt board effectiveness by encouraging detachment rather than involvement.

Areas that need to be changed are:-

1. Board members must be expert i.e. well versed in the complexities of the company and its industry, of finance and financial structure, and the relevant law and regulation.
—
2. Board meeting procedures should focus on debating new decisions, strategies, and policies, not just on reviewing past performance. The bulk of agenda time should focus on new strategies and organisational change. Boardroom procedures should be instituted to encourage debate.
—
3. Directors need better access to information - on products, customer's viewpoints, market conditions, critical strategic and organisational issues. They must get first hand knowledge of the organisation's business to be partners in decision making.
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4. Directors should be required to devote a substantial portion of their professional time to the corporation.
—
5. Board members must have the right incentives. They cannot be expected to undertake the difficult task of formulating and challenging corporate policies unless real gains are associated with successful service. Compensation should be increased and linked to stock performance.

Overall, the goal is to make board functions as part of a team of decision makers rather than as a distant referee. Board members must feel dependent- not on the Chief Executive Officer, but on the company - for their own incomes and reputation by their ability to create value through their services. Communication must be improved among managers, boards and capital markets. Large shareholders- could give second opinion on corporate policy directly to the board and managers to check on insularity. IBM, Westinghouse, General Motors and Lockheed have formalised structure for interaction with shareholders to get views and opinions about prospective policies especially concerning capital markets before implementation.

The reforms described should be put in place when the corporation is performing well before a crisis arises. This is to ensure when difficult issues arise, the dynamics of a well- governed corporation will prevail. The reforms can easily be implemented in the US due to the presence of concentrated ownership by institutional investors who are motivated to protect their interest by influencing corporate policy. Pension funds and private money managers are seeking policy changes and long term policy involvement in portfolio corporations.

Governed corporation have a more rebuilt, pluralistic, and adaptable decision making processes. There are more new ideas. The oversight process is less personalised: it focuses not on the competence of the Chief Executive Officer but on the effectiveness of the organisation. There is less risk that insularity, stasis, and false consensus will blind the organisation and tie it to mistaken policies. The governed corporation makes the organisation accountable to its markets.

US citizens recognises that a open decision-making process is an effective one. An open, flexible process is an effective one. An open, flexible process creates stability and lessens the likelihood of convulsive, contentious change. Table 1 below summarises the differences between a managed corporation and a governed corporation proposed.

Table 1

THE MANAGED CORPORATION VERSUS THE GOVERNED CORPORATION:
BOARDROOM PARADIGM AND PRACTICES

<u>The Managed Corporation Paradigm</u>	<u>The Governed Corporate Paradigm</u>
The board’s role is to hire, monitor, and, when necessary, replace management.	The board’s role is to foster effective decision and reverse failed policies.
<u>Board Characteristics</u>	<u>Board Characteristics</u>
Power sufficient to control Chief Executive Officer and the evaluation process. Independence to ensure that the Chief Executive Officer is honestly evaluated and that directors are not compromised by conflicts of interest or co-opted by management. Board procedures that allow directors to evaluate managers dispassionately and	Expertise sufficient to allow the board to add value to the decision making process. Incentives to ensure that the board is committed to creating corporate value. Procedures that foster open debate and keep board members and attuned to shareholders’ concerns

effectively	
<u>Policies</u>	<u>Policies</u>
Separate the Chief Executive Officer and chair(or lead outside director)	Required areas of expertise that must be represented on the board, such as core industry and finance.
Board meetings without the Chief Executive Officer present.	Minimum commitment time of 25 days a year.
Committee of independent directors to evaluate the Chief Executive Officer.	Large share options package for directors.
Independent financial and legal advisers to outside directors.	Designated critics to question new policy proposals.
Explicit yardsticks for judging the Chief Executive Officer's performance.	Regular meetings with large shareholders.
	Board members free to request information from any employee.

[APPENDIX 6]

Past and Present Chairmen of Lembaga Elektrik Negara Tanah Melayu

Year	Name	Background
1949-1952	W.D. Godsall	Financial Secretary to the Government
1952-1955	O.A. Spencer	Member of Economic Affairs in the Government
1955-1956	C.G. Harrison	General Manager of Malayan Railways
1956-1960	O.A. Spencer	as above
1960- 1970	Dato Kurnia Jasa Osman bin Talib	Veteran civil servant including State Secretary of Perak and Chief Minister of Malacca.
1971-1973	Tan Sri Abdul Aziz Zain	A Lawyer
1973-1977	Tan Sri Abdul Kadir bin Shamsuddin	Chief Secretary of the Government
1977-1979	Tan Sri Dato Abdullah bin Mohd. Salleh	Chief Secretary of the Government
1979- 1981	Tan Sri Dato Abdullah Ayub	Chief Secretary of the Government
1981-1984	Tan Sri Hashim bin Aman	Chief Secretary of the Government
1984-1989	Tan Sri Dato' Sallehudin bin Hashim	Chief Secretary of the Government
1989- 1991	Dato' Helmi bin Mohd. Noor	Chief Secretary to the Ministry of Energy and Telekomms
1991 till now	Tan Sri Dato' Haji(Dr.) Ani bin Arope	Chairman of Guthrie's Malaysia

**Members of the Board of Directors of Lembaga Elektrik
Negara 1987 to 1990**

<u>Year and Name of Board Members</u>	<u>Professional Background</u>	<u>Years as director</u>
1987		
YB Tan Sri Dato' Sallehuddin bin Mohamed(Chairman)		4
YB Dato' Mohd. Jalaluddin bin Zainuddin (Deputy Chairman & General Manager)		3
Encik Nik Ahmad b. Hj. Nik Hassan		1
YB Dato' Chan Keong Hong		1
Encik Megat Abdul Rahman B. Megat Ahmad		1
Encik N. Sadasivan		1
Encik Khalid b. Hj. Ismail		1
Encik A. Ragunathan		1
Encik Md. Noor b. Md. Dom		1
YBM Datuk Engku Bijaya Sura Syed Omar Syed Mohamad		1
Tuan Haji Anuar bin Hj. Abdul Latiff		1
Encik Ismail b. Hamzah		1
Encik Mahmud Badri b. Hj. Basir		1

1988		
YB Tan Sri Dato' Sallehuddin bin Mohamed(Chairman)		5
YB Tan Sri Dato' Mohd. Jalaluddin bin Zainuddin (Deputy Chairman & General Manager)		3
Encik Nik Ahmad b. Hj. Nik Hassan		2
YB Dato' Chan Keong Hong		2
Encik Megat Abdul Rahman B. Megat Ahmad		2
YB Dato' N. Sadasivan		2
Encik A. Ragunathan		2
Encik Md. Noor b. Md. Dom		2
YBM Datuk Engku Bijaya Sura Syed Omar Syed Mohamad		2
Tuan Hj. Anuar bin Hj. Abdul Latiff		2
Encik Ismail b. Hamzah		2
Tuan Hj. Mohd. Zihin bin Hj. Mohd. Hasan		1
Encik Yahya bin Yaacob		1

	Encik Mahmud Badri b. Hj. Basir		2
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	1989		
	YB Tan Sri Dato' Sallehuddin bin Mohamed(Chairman)		5
	YB Tan Sri Dato' Mohd. Jalaluddin bin Zainuddin (Deputy Chairman & General Manager)		4
	YB Dato' Chan Keong Hong		3
	Encik Megat Abdul Rahman B. Megat Ahmad		3
	YB Dato' N. Sadasivan		3
	Encik A. Ragunathan		3
	Encik Md. Noor b. Md. Dom		3
	YBM Datuk Engku Bijaya Sura Syed Omar Syed Mohamad		3
	Tuan Hj. Anuar bin Hj. Abdul Latiff		3
	Encik Ismail b. Hamzah		3
	Tuan Haji Mohd. Zihin bin Hj. Mohd. Hasan		2
	Encik Yahya bin Yaacob		2
	YB Dato' (Dr.) Othman bin Yeop Abdullah		1
	Encik Lau Yin Pin		1
	Encik Mahmud Badri b. Hj. Basir		3

	1990		
	YB Tan Sri Dato' Sallehuddin bin Mohamed(Chairman till 23/9/89)		6
	Dato' Helmi bin Md. Noor(Chairman from 16/10/89)		1
	YB Tan Sri Dato' Mohd. Jalaluddin bin Zainuddin (Deputy Chairman & General Manager)		6
	Datuk Haji Ibak b. Abu Hussin		1
	Dato' Chan Keong Hong		4
	Dato' Megat Abdul Rahman B. Megat Ahmad		4
	Dato' N. Sadasivan		4
	Encik A. Ragunathan		4
	Dato' Hj. Anuar bin Hj. Abdul Latiff(from 16/10/89)		4
	Encik Ismail b. Hamzah(till 31/12/89)		4
	Tuan Hj. Mohd. Zihin bin Hj. Mohd. Hasan		3
	Encik Yahya bin Yaacob		3
	Encik Lau Yin Pin		2
	Tuan Haji Abdullah b. Hj. Hassan		1
	Tuan Hj. Mohd. Khalil b. Hj. Abdul Rahim		1
	Encik Mahmud Badri b. Hj. Basir(Company Secretary)		4

1991		
Tan Sri Dato' Hj. (Dr.) Ani bin Arope(Chairman)		1
Datuk Haji Ibak b. Abu Hussin(Managing Director till 29/10/91)		2
Dato' Helmi bin Md. Noor		2
Dato' Chan Keong Hong		5
Dato' Megat Abdul Rahman B. Megat Ahmad		5
Dato' N. Sadasivan		5
Dato' Mohd. Ramli b. Mat Wajib(till 31/10/91)		1
Dato' Hanifah b. Noordin		1
Dato, Dr. Joseph Eravelly		1
Tuan Hj. Mohd. Zihin bin Hj. Mohd. Hasan		3
Encik Lau Yin Pin		3
Dr. Mazlan b. Ahmad(from 1/11/91)		1
Dr. Abdul Aziz b. Muhamad(Alternate director to Dr. Mazlan b. Ahmad from 1/11/91)		1
Cik Norminshah binti Sabirin(Alternate director to Dato' Helmi bin Md. Noor from 1/12/91)		1
Dato' Hj. Anuar bin Hj. Abdul Latiff(Alternate director to Dato' Helmi bin Md. Noor till 30/11/91)		4
Encik Yahya b, Yaacob(Alternate director to Dato' Mohd. Ramli b. Mat Wajib till 31/10/91)		4
Encik Mahmud Badri b. Hj. Basir(Company Secretary)		5

1992		
Tan Sri Dato' Hj. (Dr.) Ani bin Arope(Executive Chairman from 1/9/92)		2
Dato' Mohamed Ariffin b. Abdul Rahman(from 1/9/92)		1
Dato' Helmi bin Md. Noor		3
Dato' Chan Keong Hong		6
Dato' Megat Abdul Rahman B. Megat Ahmad		6
Dato' N. Sadasivan		6
Dr. Abdul Aziz b. Muhamad		1
Dato' Hanifah b. Noordin		2
Dato' Dr. Joseph Eravelly		2
Dato' Hj. Mohd. Zihin bin Hj. Mohd. Hasan		4
Encik Lau Yin Pin		4
Dr. Mohd. Yusof b. Ismail(Alternate director to Dato' Helmi bin Md. Noor from 1/10/92)		1
Dato' Dr. Mazlan bin Ahmad(from 1/11/91)		1
Puan Norminshah bte. Sabirin(Alternate director to Dato' Helmi bin Md. Noor till 25/9/92)		1

	Dato' Mahmud Badri b. Hj. Basir(Company Secretary)		6
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	1993		
	Tan Sri Dato' Hj. (Dr.) Ani bin Arope(Executive Chairman)		3
	Dato' Mohamed Ariffin b. Abdul Rahman		2
	Dato' Helmi bin Md. Noor		4
	Dato' Chan Keong Hon		7
	Dato' Megat Abdul Rahman B. Megat Ahmad		7
	Dato' N. Sadasivan		7
	Dr. Hj. Abdul Aziz b. Muhamad(from 13/1/93)		2
	Dato' Hanifah b. Noordin		3
	Dato' Dr. Joseph Eravelly		3
	Dato' Hj. Mohd. Zihin bin Hj. Mohd. Hasan		5
	Encik Lau Yin Pin		5
	Dr. Mohd. Yusof b. Ismail(Alternate Director to Dato' Helmi b. Md. Noor from 1/10/92)		2
	Encik Anuar bin Aji (Alternate Director to Dr. Abdul Aziz b. Muhamad from 13/1/93)		1
	Puan Norminshah bte. Sabirin(Alternate director to Dato' Helmi b. Md. Noor till 25/9/92)		1
	Dato' Mahmud Badri b. Hj. Basir(Company Secretary)		7

	1994		
	Tan Sri Dato' Hj. (Dr.) Ani bin Arope		4
	Dato' Abdul Rashid b. Ahmad(from 15.5.94)		1
	Tan Sri Dato' Chan Choon Tak(from 13/1/94)		1
	Dato' Mohd. Ali bin Hassan(from 1/6/94)		1
	Dato' Megat Abdul Rahman B. Megat Ahmad		8
	Dato' N. Sadasivan		8
	Dato' Dr. Hj. Abdul Aziz b. Muhamad		3
	Dato' Hanifah b. Noordin		4
	Dato' Dr. Joseph Eravelly		4
	Encik Zubir . Embong(from 1/5/94)		1
	Encik Lau Yin Pin		6
	Dato' Mohamed Ariffin b. Abdul Rahman(till 4/2/94)		3
	Dato' Helmi bin Md. Noor(till 1/6/94)		5
	Dato' Chan Keong Hong(till 31/12/93)		8
	Dato' Hj. Mohd. Zihin bin Hj. Mohd. Hasan(till 31/12/93)		6
	Dato' Mahmud Badri b. Hj. Basir(Company Secretary till 31/7/94)		8
	Datin Azizah binti Osman(Company Secretary from		1

	1/8/94)		
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1995		
Tan Sri Dato' Hj. (Dr.) Ani bin Arope		5
Dato' Abdul Rashid b. Ahmad		2
Tan Sri Dato' Chan Choon Tak		2
Dato' Mohd. Ali bin Hassan		2
Dato' Megat Abdul Rahman B. Megat Ahmad		9
Dato' N. Sadasivan(till 1/5/95)		9
Dato' Dr. Hj. Abdul Aziz b. Muhamad(till 1/2/95)		4
Dato' Hanifah b. Noordin		5
Dato' Dr. Joseph Eravelly(till 29/12/94)		5
Encik Zubir . Embong		2
Encik Lau Yin Pin		7
Dr. Aris b. Osman(from 1/2/95)		1
Dato' Zainun Aishah bte. Ahmad(from 1/5/95)		1
Encik Hari Narayanan(from 1/3/95)		1
Dr. Mohd. Yusof b. Ismail(Alternate director to Dato' Mohd. Ali Hassan)		3
Encik Abdul Rahman b. Hamzah(alternate director to Dr. Aris b. Othman from 1/6/95)		1
Encik Anuar bin Aji(till 1/2/95 alternate directot to Dato Hj. Dr. Abdul Aziz b. Muhamad)		2
Datin Azizah binti Osman(Company Secretary from 1/8/94)		2

[APPENDIX 7]

CORPORATE GOVERNANCE OF TNB

QUESTIONNAIRE

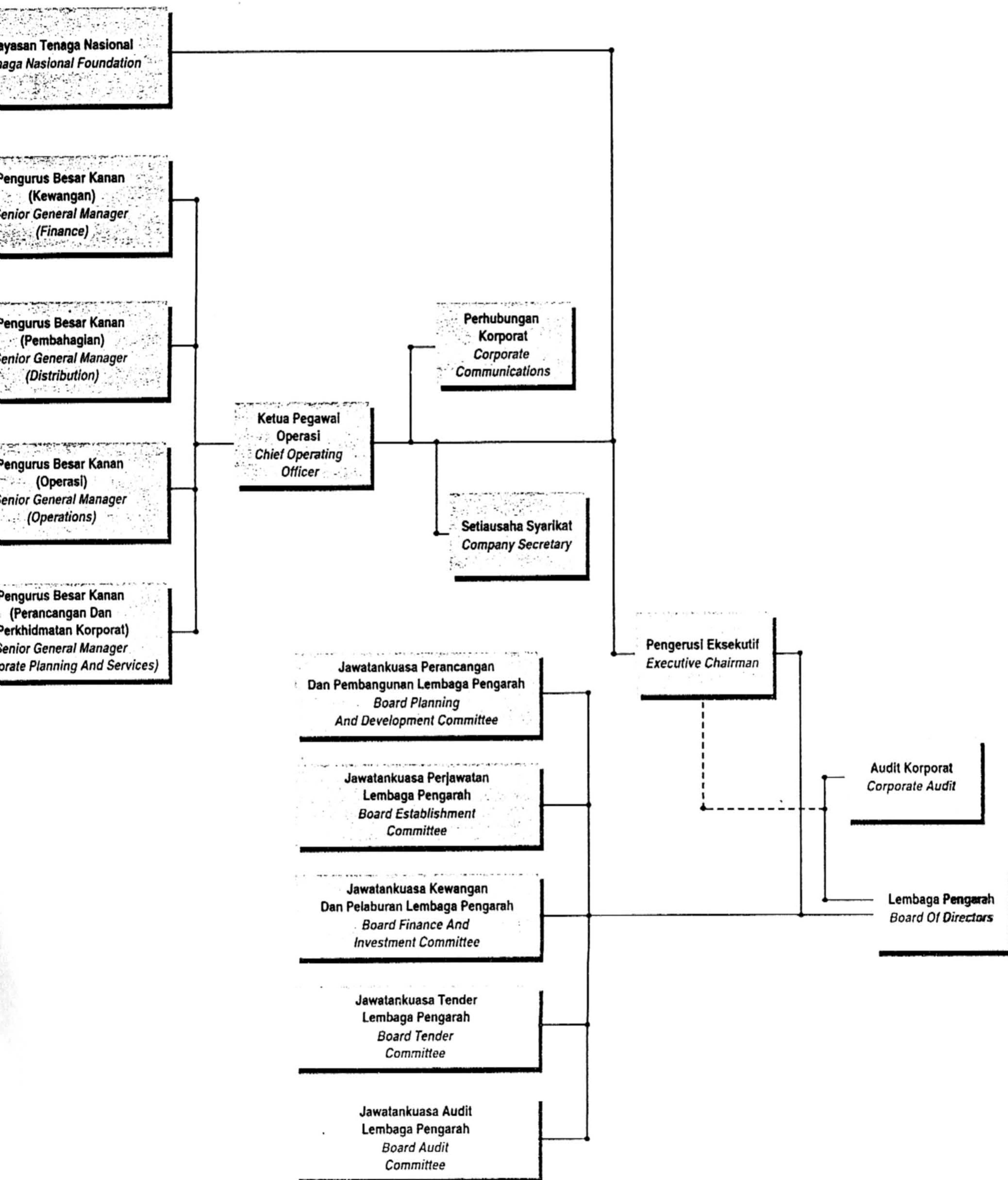
1. The current size of the Board, i.e. 11 members is:
 - a) too small
 - b) small
 - c) just right
 - d) big
 - e) too big
2. The ratio of the Board's composition in terms of "inside directors" to "outside directors", businessmen to civil servants, professional to non-professionals is:
 - a) very unbalanced
 - b) quite unbalanced
 - c) just right
3. New Board members are most likely elected at the AGM of share holders. I :
 - a) Totally disagree
 - b) quite disagree
 - c) agree
 - d) quite agree
 - e) Totally agree.
4. How is a new board member selected and appointed?.
5. How is a new CEO selected and appointed
6. On average the full board meeting takes place:
 - a) less than 3 times a year
 - b) 4 to 8 times a year
 - c) 9 to 12 times a year
 - d) 13 to 16 times a year
 - e) more than 17 times a year

7. The above board meeting frequency is;
 - a) very inadequate
 - b) inadequate
 - c) adequate
 - d) more than adequate
 - e) unnecessarily too frequent
8. How are the Senior General Managers selected?
9. WHAT IS THE ROLE PLAYED BY BANKS IN THE GOVERNANCE OF TNB?
10. What role does the employee play in the governance of the company?
11. When was the audit committee formed?
12. Who are the members of the audit committee? How are the members of the committee selected?
13. What are the duties of the Audit Committee?
14. Remuneration Committee.
15. Nominating Committee

APPENDIX 8

STRUKTUR ORGANISASI TNB TNB ORGANISATIONAL STRUCTURE

9



Quorum: Three (3) Members present, including the Chairman.

Terms of Reference

Be responsible to the Board for the overall planning and development of the Company and in particular will include the following functions.

1. Planning and development of all power projects - generation, transmission and distribution.
2. Monitoring the implementation and progress of major projects.
3. To consider and approve in principle major Works and Buildings other than power projects.
4. Monitor and review long term load forecast and upgrading of services.
5. To perform any other functions as required by the Board from time to time.

APPENDIX 10

LAMPIRAN "A"

JAWATANKUASA PERJAWATAN

Korum : Tiga (3) orang Ahli hadir termasuk Pengerusi.

Syarat-Syarat Tugas

Bertanggungjawab kepada Lembaga bagi satu dasar am yang sesuai mengenai pengurusan kakitangan Syarikat terutamanya yang melibatkan fungsi-fungsi berikut:-

1. Menetap dan melaksanakan satu struktur organisasi untuk Syarikat.
2. Merumus dasar dan prosedur pengambilan kakitangan, kenaikan pangkat dan tata tertib dan menentukan pelaksanaan yang sempurna dasar-dasar dan prosedur-prosedur tersebut.
3. Melaksanakan Terma-Terma dan Syarat-Syarat Perkhidmatan Syarikat dan mengulangujanya dari masa ke masa.
4. Bertanggungjawab pada amnya terhadap Belanjawan Perjawatan dan yang berkaitan dengan latihan dan biasiswa.
5. Merumus dan melaksanakan rancangan biasiswa dan latihan Syarikat.
6. Perlantikan dan Kenaikan Pangkat Eksekutif-Eksekutif -
 - (a) Untuk meluluskan perlantikan Eksekutif-Eksekutif TNB di dalam Kumpulan G8A/B hingga G11 (iaitu Pemegang Ijazah);
 - (b) Untuk mengesyorkan kepada Lembaga Pengarah kelulusan bagi kenaikan pangkat dan pemangkuan jawatan bagi Eksekutif-Eksekutif seperti berikut:

Gred	Pemangkuan	Kenaikan Pangkat
G12 ke atas	Lembaga Pengarah atas perakuan Jawatankuasa Perjawatan Lembaga Pengarah	Lembaga Pengarah atas perakuan Jawatankuasa Perjawatan Lembaga Pengarah
G10 dan G11	Jawatankuasa Perjawatan Lembaga Pengarah atas perakuan Jawatankuasa Pengurusan	Jawatankuasa Perjawatan Lembaga Pengarah atas perakuan Jawatankuasa Pengurusan
G09 dan G09A	Jawatankuasa Pengurusan atas Perakuan Ketua Jabatan/Bahagian	Jawatankuasa Perjawatan Lembaga Pengarah atas perakuan Jawatankuasa Pengurusan

7. Mengendali kes-kes tatatertib Eksekutif-Eksekutif TNB dalam Kumpulan-Kumpulan G12 dan G13.
8. Meluluskan peminjaman Eksekutif-Eksekutif TNB dalam Kumpulan-Kumpulan G8A/B hingga G11 kepada pertubuhan-pertubuhan lain.
9. Meluluskan rawatan dan perbelanjaan perubatan luar negeri untuk kakitangan TNB dan pesara-pesaranya.
10. Meluluskan penyertaan Eksekutif-Eksekutif dalam Kumpulan-Kumpulan G8A/B hingga G11 dalam kursus-kursus latihan luar negeri, seminar, persidangan, woksyop dll. dan mengesyorkan kepada Lembaga Pengarah untuk kelulusannya bagi Kumpulan G13 ke atas.
11. Meluluskan pemberian biasiswa termasuk pemilihan calon-calon, bilangan biasiswa yang hendak diberi, kategori atau jenis-jenis kursus/bidang yang hendak diikuti dan bilangan calon-calon mengikut kaum yang hendak diberi biasiswa supaya mencerminkan komposisi yang ditetapkan.
12. Menjalankan sebarang tugas lain yang sesuai sebagaimana yang diperlukan oleh Lembaga Pengarah dari masa ke masa.

Quorum : Three (3) Members present including the Chairman.

Terms of Reference

- (i) To make recommendations to the Board for approval of the annual and supplementary budgets.
- (ii) To review and recommend to the Board acceptance or otherwise of major accounting and financial policies, principles and practices.
- (iii) To review the Interim and Annual Accounts.
- (iv) To review and monitor quarterly progress reports on financial performance, capital budgets and investments of TNB.
- (v) To review and monitor monthly the Management Accounts Report.
- (vi) To monitor and review the outstanding debts.
- (vii) To monitor and review Treasury Management.
- (viii) To monitor and review Retirement Benefit Trust Fund.
- (ix) To monitor and review the Investment Unit.
- (x) To review and make recommendations to the Board the formation and operation of employees financial/investment schemes.
- (xi) To monitor and review investments in subsidiary and associated companies, and to consider and make appropriate recommendation on proposals for new investments.
- (xii) To review and recommend to the Board issuance of new TNB shares.
- (xiii) To review and recommend to the Board on related matters pertaining to Employees Shares Schemes.
- (xiv) To review and monitor the commercial policies of TNB and make recommendations to the Board.
- (xv) Any other matters delegated or referred to it by the Board from time to time.

Quorum: Three (3) Members present including the Chairman.

Terms of Reference

Generally, to be responsible to the Board for the formulation and review of policies and procedures for the award of tenders for materials, equipment, works and services. In particular the functions of the Tender Committee will be as follows:-

1. To cause to be established a Management Tender Committee (MTC) comprising of (a) the Chief Executive of the Company, who shall be the Chairman, (b) the Chief Finance Officer, (c) the Head of the Purchasing Department, and (d) the relevant head of the department/division requiring the acquisition of the materials, equipment and work and services as the case may be; and to approve the procedures for acceptance of tenders by the MTC in accordance with the limit of authority stated hereunder;

The minutes of the meeting of the MTC complete with relevant details shall be submitted to the Tender Committee and the Board of Directors.

2. The authority for the acceptance of tenders, subject to tender procedures and policies of the Board shall be:-

- | | | |
|-----|---------------------------------|---|
| (a) | Management Tender:
Committee | Tenders of up to RM5 million |
| (b) | Tender Committee: | Tenders of over RM5 million but
less than \$15 million. |
| (c) | Board: | More than RM15 million. |

- (d) For tenders of over \$15 million, the Board shall make appropriate recommendations to the Ministry of Finance which shall have the power to approve their acceptance.
3. The authority for approving Variation Orders -
- (a) Management Tender Committee is given the authority to approve Variation Orders subject to such variation order or cumulative variation orders not exceeding 30% of the authorised limit in (2)(a) above;
 - (b) In case of variation/s exceeding the 30% limit, the approving authority shall be the next as listed in (2)(b) and (c) above, subject to the Board determining and approving any variations up to a maximum of \$15 million.
4. The authority for approving the provision of a contingency sum which shall be kept to a minimum and depending on the nature, shall not exceed 20% of the estimated contract price and such a provision shall be kept "confidential" and under no circumstances shall be disclosed to the tenderer/contractor.

HAD KEWANGAN SETUJUTERIMA TENDER/SEBUTHARGA BAGI
PEROLEHAN BARANG-BARANG/KERJA DAN PERKHIDMATAN YANG
MELEBIHI RM250,000.00

PERINGKAT BERKUASA MELULUSKAN	PENGERUSI	NILAI TENDER SEBUTHARGA
JAWATANKUASA TENDER PENGURUSAN	PENGURUS BESAR KANAN (OPERASI)/ PENGARAH	> RM250,000.00 HINGGA RM5.0 JUTA
JAWATANKUASA TENDER LEMBAGA PENGARAH		> RM15.0 JUTA HINGGA RM15.0 JUTA
LEMBAGA PENGARAH & KEMENTERIAN KEWANGAN		> RM15.0 JUTA DAN KE ATAS

BOARD AUDIT COMMITTEE

The Board Audit Committee comprises five non-executive directors as follows:

Dato' Hanifah bin Noordin -
Chairman
Dato' Nelayander Sadasivan
Encik Lau Yin Pin @ Lau Yen Beng
Dato' Dr Joseph Eravelly
Encik Anwar bin Aji

TERMS OF REFERENCE OF THE BOARD AUDIT COMMITTEE

CONSTITUTION

The Board of Directors of Tenaga Nasional Berhad (TNB), in accordance with Articles 146 of the Memorandum and Articles of Association of TNB, has established a Committee of the Board, known as the Board Audit Committee (BAC), vide Minute No. 39/90 on 9 October, 1990.

The functions and authority of the BAC shall extend to TNB and all its subsidiaries collectively referred to as the "Group").

PRIMARY PURPOSE

The BAC has been formed with the following objectives in view :-

Ensure openness, integrity and accountability in the Group's activities so as to safeguard the rights and interests of the Shareholders.

Provide assistance to the Board in fulfilling its fiduciary responsibilities relating to corporate accounting and reporting practices.

- c. Improve the Group's business efficiency, the quality of the accounting and audit function and strengthen the public's confidence in the Group's reported results.
- d. Maintain through regularly scheduled meetings, a direct line of communication between the Board and the External and Internal Auditors.
- e. Enhance the independence of the external and internal audit functions.
- f. Create a climate of discipline and control which will reduce the opportunity for fraud.

MEMBERSHIPS

The members of the BAC shall be appointed by the Board of Directors of TNB and shall generally consist of five members but not less than three members. If membership for any reason falls below three members, the Board of Directors shall, within one month of that event, appoint such number of new members as may be required to fulfil the minimum requirement.

The members of the BAC shall be independent, non-executive directors of TNB. They shall not be:-

- a. a spouse, parent, brother, sister, son or adopted son, or daughter or adopted daughter of an Executive Director of the Board of Directors of TNB or any related corporation; or

- b. any person having a relationship which, in the opinion of the Board of Directors of TNB, would interfere with the exercise of independent judgement in carrying out the functions and duties of the BAC.
- c. The Chairman of the BAC shall be elected by the members of the BAC.

AUTHORITY

The BAC is authorised by the Board of Directors of TNB to investigate any activity within its Terms of Reference. It is authorised to seek and obtain any information it requires from any employee of the Group. All documents of the Group shall be made accessible to the BAC.

The BAC is authorised to direct any employee of the Group to appear before it to give information or clarification as required.

The BAC is authorised to obtain outside legal or any other professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary.

FUNCTIONS AND DUTIES

- a. Assess the quality and effectiveness of the systems of internal control and the efficiency of the Group's operations.
- b. Review and recommend acceptance or otherwise of major accounting policies, principles and practices.
- c. Review the half-year and annual financial statements of the Company and Group before submission to the Board. The review should focus primarily on :-

- i) any changes in accounting policies and practices
- ii) major judgemental areas
- iii) significant adjustment resulting from audit
- iv) the going concern assumptions
- v) compliance with accounting standards
- vi) compliance with stock exchange and legal requirements

- d. Approve the Corporate Audit Charter and ensure that the internal audit function is adequately resourced and has appropriate standing in the Group.
- e. Approve the appointment of the Head of Internal Audit.
- f. Review the Internal Audit plans and the scope of audit.
- g. Direct any special investigations to be carried out by Internal Audit.
- h. Review Internal Audit reports and Management response and ensure that appropriate action is taken in respect of these reports and BAC resolutions.
- i. Nominate the External Auditor together with such other functions as may be agreed to by the BAC and the Board and recommend for approval of the Board the external audit fee.
- j. Review external audit plans and scope of work.

k. Review External Audit reports and Management response and ensure that appropriate action is taken in respect of these reports and BAC resolutions.

Discuss problems and reservations arising out of internal or external audits, and any matters the auditors may wish to discuss, in the absence of Management or Executive Director where necessary.

n. Perform other related duties as directed by the Board of Directors.

MEETINGS

a. Meetings of the BAC shall be held not less than six times during the financial year of TNB.

b. Upon the request of any member of the BAC, the Head of Internal Audit or the External Auditor, the Chairman of the BAC shall convene a special meeting of the BAC to consider any matters brought up by them.

c. The quorum for a meeting of the BAC shall be three members. In the absence of the Chairman, the members present shall elect a Chairman for the meeting from amongst the members present.

d. The meetings of the the BAC shall be governed by the provisions contained in the Memorandum and Articles of Association of TNB for regulating the meetings and proceedings of Directors.

e. Directors of the Board who are not members of the BAC may also attend the meetings of the BAC, but they shall not have any voting rights.

f. The meetings of the BAC shall normally be attended by the Head of Internal Audit and the Management of TNB shall be represented by the Chief Operating Officer and the Senior General Manager (Finance).

g. The BAC shall meet the External Auditors at least twice a year. At least once a year the BAC shall meet the External Auditors without TNB Management or Executive Director present.

h. The Secretary of the BAC shall be the Company Secretary.

i. Minutes of BAC meetings shall be tabled at the meeting of the Board of Directors of TNB.